A.F.R. 034

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 55 OF 2006

PETITIONER		Mohammed Siddique, S/o Mohd. Ismail, Age 32 Yrs. R/o. Chuchuyah, Thana Torba, Bilaspur (C.G.)
	Vs.	
RESPONDENTS	1.	State of Chhattisgarh, Through Secretary, Home Department, D.K.S. Bhawan, Raipur (C.G.)
	2.	Additional Chief Secretary, (Home) Chhattisgarh Government, D.K.S. Bhawan, Raipur (C.G.)
	3.	District Magistrate, Bilaspur (C.G.)
	4.	Superintendent of Police, Bilaspur (C.G.)

Present : Shri Ali Asgar, learned counsel for the petitioner.
Shri Yashwant Singh, learned G.A. for the State of C.G.

(ORAL ORDER)
(Passed on 06th January, 2006)

In this writ petition the petitioner has sought for writ of *certiorari* to quash the order dated 20/12/2005 marked as Annexure-P/5 passed by the Additional Chief Secretary (Home), Chhattisgarh Government - second respondent herein dismissing appeal and affirming the order dated 06/08/2005 passed by District Magistrate, Bilaspur - third respondent herein under Section 6 (c) of the Chhattisgarh Suraksha Adhiniyam, 1990 (*for short 'the Adhiniyam'*) externing the petitioner from six districts in the State of Chhattisgarh.

(2) The facts of the case, in brief, are as follows:

The Superintendent of Police, Bilaspur – fourth respondent herein filed report before the third respondent against the petitioner for initiating

proceedings under Sections 3 to 5 of the *Adhiniyam*. The third respondent having issued a notice to the petitioner and satisfying himself that the petitioner is habitually indulging in the activities of gambling which is a social crime, passed the impugned order purported to be under Clause (c) of Section 6 of the *Adhiniyam*. When that order was assailed before the second respondent by way of appeal, the second respondent by order dated 20/12/2005 dismissed the appeal. Hence, this writ petition.

(3) I have heard learned counsel for the parties.

(4) Sri Ali Asgar learned counsel appearing for the petitioner would contend that the second respondent as well as the third respondent have lost sight of the provisions of Section 6 of the *Adhiniyam* and according to the learned counsel the provisions of the Section 6 of the *Adhiniyam* have no application to the case of the petitioner inasmuch as though the petitioner was convicted under Section 4-A of the Public Gambling Act, 1867 (*for short 'the Gambling Act'*) thrice, on each occasion he was sentenced only with fine and not with imprisonment. This was the only contention urged by the learned counsel for assailing the impugned orders made by the second and third respondents. Sri Yashwant Singh, learned Govt. Advocate, per contra, would support the impugned order and submit that the contention urged by the learned counsel for the petitioner is misconceived and not tenable.

(5) The third respondent has passed the order in exercise of the power vested in him under Section 6(c) of the *Adhiniyam*. The relevant portion of Section 6 reads as follows:

6. "**Removal of persons convicted of certain offences.-** If a person has been convicted –

(a) of an offence,-

(i) under chapter XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860); or

(ii) under the Protection of Civil Rights Act, 1955 (22 of 1955);

or

(b) twice, of an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956); or

(c) thrice, of an offence within a periof the three years under section 3 or 4 of the Public Gambling Act, 1867 (3 of 1867), in its application to the State of Chhattisgarh;

the District Magistrate may, if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted direct such person by an order to remove himself outside the district or part thereof or such area and any district or districts or any part thereof, contiguous thereto by such route and within such time as the District Magistrate may order and not to enter or return to the District or part thereof or such area and such contiguous district or part thereof, as the case may, from which he was directed to remove himself."

Sub Section (1) of Section 4-A of the Gambling Act, 1867reads as follows:

" **4-A. Punishment for printing or publishing digits, figures, signs, symbols or pictures relating to Worli Matka or other form of gaming:-** (1) Who ever prints or publishes in any manner whatsoever any digits or figures or signs or symbols or pictures or combination of any two

> or more of such digits or figures or signs or symbols or pictures relating to Worli Matka or any other form of gaming under any heading whatsoever or by adopting any form or device, or disseminates or attempts to disseminate or abets dissemination of information relating to such digits or figures or signs or symbols or pictures or combination of any two or more of them shall be punishable with imprisonment which may extent to six months and with fine which may extent to one thousand rupees."

It is true that by virtue of the provisions of Clause (c) of Section 6, the District Magistrate has the power to extern a person only if such person has been convicted thrice, of an offence within a period of three years under Section 3 or 4 of the Gambling Act, in its application to the State of Chhattisgarh. There is no controversy between the parties that the petitioner was convicted thrice, of an offence within a period of three years under Section 3 or 4 of the Gambling Act before the impugned order of externment was passed by the third respondent. However, it is the contention of Sri Ali Asagar that since sub –Section (1) of Section 4-A of the Gambling Act provides that if a person is convicted for an offence under the said Act, he should be sentenced with imprisonment which may extend to six months as well as with fine which may extend to one thousand rupees and since in the instant case, the petitioner was not punished with imprisonment but only with fine, it could not be regarded as a conviction under the provisions of the Gambling Act.

(7) There is an apparent fallacy in the submission of learned counsel for the petitioner. The language employed in Clause (c) of Section 6 of the *Adhiniyam* is plain, precise and unambiguous and it does not imply more than one meaning. The said provision in

unmistakable terms empowers District Magistrate concerned to initiate externment proceedings if a person has been convicted thrice, of an offence punishable under Section 3 or 4 of the *Gambling Act* within a period or three years before passing the impugned order. As already pointed out supra, the petitioner was admittedly convicted thrice for an offence punishable under Section 3 or Section 4 of the *Gambling Act* within a period of three years before initiation of the proceedings. The argument of Sri Ali Asgar, if I may say so, is grounded on the assumption that 'conviction is sentence and sentence is conviction'. The condition precedent to invoke the power under Section 6 of the *Adhiniyam* by the District Magistrate is the existence of a specified nature of conviction and not sentence. There is absolutely no reference to sentence as such in the whole body of Section 6 of the *Adhiniyam* and it only speaks of conviction. There is no need for me to interpret the provision of sub- Section (1) of Section 4-A of the Gambling Act whether the word 'and' occurring in the phrase 'shall be punishable with imprisonment which may extend to six months and with fine which may extend one thousand rupees is a conjoint or disjoint . In whatever way we interpret that word, that would in no way support the contention of Sri Ali Asgar. It is not the contention of Sri Ali Asgar that the conviction of the petitioner thrice was not under Section 3 or Section 4 of the *Gambling Act*, but, under some other statute. If that is so, since the petitioner was admittedly convicted thrice of an offence punishable under Section 3 or Section 4 of the *Gambling Act* within a period of three years before the date on which the proceedings were initiated, it could not be said that the District Magistrate, Bilaspur lacked legal power to initiate proceedings under Section 6 of the *Adhiniyam* or to pass the impugned order. The

writ petition is, therefore, devoid of merit and it is accordingly dismissed, however, with no costs.

Sd/-
S.R. Nayak
Chief Justice

Brajesh